IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6666 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

DHIRAJLAL Z KOTAK

Appearance:

MR KV GADHIA for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. K.V. Gadhia is appearing on behalf of the petitioner Corporation and learned advocate Mr. J.S. Brahmbhatt is appearing on behalf of the respondent workman.

2. The brief facts of the present petition is that the respondent workman was working as a Conductor at Rajkot Division on 10th June, 1995. His bus was checked at Gondal College Chowk. It was found that he had not issued tickets to 4 passengers of two groups and the way bill was closed. In pursuant to the said allegations, he was issued chargesheet on 18th September, 1995 and thereafter the Departmental inquiry was held against him and ultimately the respondent workman was dismissed from service on 23rd June, 1996 as in the past also, there were 13 cases of misconduct by the respondent workman. The petitioner Corporation had filed Approval Application before the Industrial Tribunal bearing No.231 of 1996 in Reference (I.T.) No.108 of 1996. The Industrial Tribunal had rejected the said Approval Application on 17th June, 1999 and the said order of the Tribunal is challenged in the present petition by the petitioner Corporation. While rejecting the Approval Application, the Tribunal has come to the conclusion that the departmental inquiry which has been conducted by the petitioner Corporation is vitiated as it is against the principles of natural justice. The Inquiry Officer has been acting as Prosecutioner and Judge asking questions to the respondent workman during the inquiry and also examining the Reporter by asking questions which vitiated the departmental inquiry. The Tribunal has also come to the conclusion that no opportunity was given to the respondent workman and the Inquiry Officer has come to the conclusion that there is no need to produce the way bill in question. Therefore, the Tribunal has come to the conclusion that reasonable opportunity was not given to the respondent workman and the petitioner Corporation has also not produced any oral evidence before the Tribunal and complete one month's pay was also not paid to the respondent workman.

3. In view of these facts, both the learned advocates submitted to this court that according to the decision of the Apex Court in the case of Bharat Fritz Werner (P) Ltd. reported in 1990(1) JT Page 305, this Court can exercise the powers with the consent of the parties similar to Section 11A of the ID Act, 1947. Therefore, I am examining the merits of the matter. The allegation against the respondent workman was non

issuance of tickets to 4 passengers of 2 groups when the bus was checked at Gondal College Chowk and the waybill was closed and also having 13 past misconducts in his credit. Mr. Brahmbhatt submitted that in the chargesheet itself, there were no allegations of misconduct relating to dishonesty and misappropriation because according to the allegations, from 4 passengers of 2 groups, the respondent workman has not recovered any amount of fare and so no tickets were issued. Therefore, it is a case of breach of administrative order and negligence on the part of the respondent workman and since the report was submitted late by the Checking Inspector, Clause 12B is not applicable to the present case of the respondent workman.

4. It is also necessary to consider the nature of work of the Conductor while performing work in ST buses. This is also an important aspect which must be kept in mind while dealing with conductors and while imposing the penalty on such conductors.

5. In this case, the misconduct for which the extreme punishment visited the worker is causing a very negligible loss to the employer. A serious question that arises in such cases would be, besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Was it with intention to gain 50 paise that the worker committed the present misconduct? Was he in such a depraved circumstance that he desired to make an illegal gain of a trivial amount of 50 paise? What was the number of passengers travelling in the bus and is it possible that he would have accidentally omitted to issue tickets? Is it not possible that while he was in the process of issuing tickets, the two persons might have boarded the bus? Several cases we come across, such omission takes place in buses loaded with more than the permitted number of passengers. Such may be cases of human error committed by the Conductor while issuing tickets to passengers travelling in a bus with passengers much more

than the permitted number. The disciplinary authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal.

6. A misconduct like the above on several instances is not committed insistentionally. It is too much to imagine that a worker would have omitted to issue tickets deliberately to gain few rupees at the risk of his job. More often, it is due to the crowd in the bus that he misses to issue tickets than a desire by him to gain few rupees. The castastrophe that may befall is more serious than what is sought to be prevented. First it visits the employee. He is rendered jobless. It generates a litigation which in the present pattern spreads over years producing ultimately a disgruntled employee. Actually the real victim of any such punishment is the family of the worker whose breadwinner is jobless. The future is rendered bleak to them and it in its turn causes greater hardship to the society than it intended to cure.

7. That apart, the management also shares the losses in another way. When the worker is dismissed, someone else will have to be placed in his place to discharge the the duties. And if the worker is ordered to be reinstated ultimately with backwages, virtually there will be double payment i.e. two persons, would have to be paid for a single job. In the case of a public sector

undertaking, the loss is passed on to the common man, the tax payer.

8. The question then would be in the case of a Conductor (as in the instant case) who has a past history, should the employer ignore the same? This is a case, the remedy for which the employer himself should discover and the solution is not far to discover. In the case of a ticketless traveller the management has designed a method to curb the same by imposing fine on them. The object with which this is done is so that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself who is discovered to be intentionally pilfering the revenue of the Corporation.

9. We may notice that in all these cases of non-issue of tickets, we may take note of the fact that there are two parties joining to commit the misconduct,

i.e., the Conductor and the passenger. If the Conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an event, the passenger who boards the bus must cooperate with the Conductor. If he has to cooperate, then he should be familiar to the conductor and he should agree to be a party to commit the misconduct at the risk of paying penalty in the event of being caught by the inspecting staff. It is too much to imagine that the Conductor will

hatch a conspiracy to pilfer revenue of the Corporation as and when stray passengers board the bus at various stages. If the Conductor wants to make an illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence, the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental.

10. Hence, the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding. It should really assess each case on its own merit. The fact that on a past occasion the delinquent might have acted in a particular manner does not mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of facts should be decided with reference to evidence regarding the said allegations and those allegations should be the basis of the decision. May be, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to assess the quantum of punishment to be imposed. But that by itself cannot provide any foundation to hold that the present conduct of the worker is a misconduct.

11. Considering the submissions of both the learned advocates, according to my opinion the competent authority has not considered some of the important aspects of the matter that at the time when the bus was checked, 80 passengers were found in the bus out of which 4 passengers were found without tickets from whom no fare

was collected by the respondent workman. Therefore, considering the said aspect of the matter that there was no dishonesty and misappropriation committed by the respondent workman then the punishment of dismissal which has been imposed by the competent authority is harsh, unjustified and disproportionate to the misconduct. According to Mr. Gadhia, in all, there were 23 misconducts conducted by the respondent workman in the past, out of which 13 are relating to cases of tickets. Therefore, according to Mr. Gadhia some punishment must have been imposed on the respondent workman though the present misconduct may not serious but his past record is such a serious one which requires some severe punishment upon the respondent workman. It is necessary for the competent authority to consider certain relevant factors before imposing the penalty of dismissal against the workman like socio-economic background, family background, length of service, past record and compelling circumstances to commit misconduct, according to the view taken by the Division Bench of this Court reported in 1994 2 LLJ Page 1113. In the present case considering the allegations of not issuing tickets to 4 passengers of

2 groups and that no fare was collected by the respondent workman and at the time of checking, 80 passengers were found in the bus and the way bill was closed. Therefore, looking to the gravity of misconduct and past record of 23 misconducts in the credit of the respondent workman, according to my opinion if total backwages of interim period from the date of dismissal i.e. 21.09.1996 to the date of the order passed by the Tribunal i.e. 17th June, 1999 is denied to the respondent workman by way of penalty for the misconduct which has been committed by the respondent workman and considering the fact of past record, length of service and compelling circumstances to commit misconduct it will be just and appropriate and will meet the ends of justice. Accordingly the punishment of dismissal imposed by the competent authority against the respondent workman dated 21st September, 1996 is hereby quashed and set aside and it is directed to the petitioner Corporation to reinstate the respondent workman in service with continuity of service without backwages of interim period from 21st September, 1996 to 17th June, 1999. Accordingly, the order passed by the Tribunal dated 17th June, 1999 is quashed and set aside and it is directed to the petitioner Corporation to reinstate the respondent workman in service within a period of one month from the date of receiving a

certified copy of the said order and it is directed to the petitioner Corporation to pay full wages to the respondent workman from 17th June, 1999 till the date of

actual reinstatement of the respondent workman within a period of six weeks from the date of receiving a certified copy of the said order. Accordingly, the said petition is partially allowed. Rule made absolute to that extent. No order as to costs.

(H.K. Rathod, J.)

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